No. 11830

United States
Circuit Court of Appeals
For the Ninth Circuit

CLARANCE A. REES and EVELYN E. REES,
bankrupts,

Appellants,

vs.

JENSEN, Individually, and as Executrix
the Estate of SOREN N. JENSEN, Deceased,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

Rotary Colorprint, 870 Brannan Street, San Francisco 3-3-48—60

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

ATTORNEYS

Counsel for Bankrupts—Appellants,

MARY E. BURRUS
of Colvin & Williams
660 Central Building,
Seattle, Washington.

Counsel for Judgment Creditors—Appellees,

LADY WILLIE FORBUS,
1601 Northern Life Tower,
Seattle, Washington.

In the District Court of the United States for the Western District of Washington, Northern Division

In Bankruptcy, No. 37440 (Re-opened)

In the Matter of

CLARENCE A. REES and EVELYN E. REES, a marital community,

Bankrupts.

REFEREE'S CERTIFICATE ON REVIEW

To the Honorable Lloyd L. Black, United States District Judge:

I, Van C. Griffin, Referee in Bankruptcy in charge of this proceeding, do hereby certify:

That in the course of such proceedings, pursuant to a hearing on the objections of Soren N. Jensen and Anna Jensen, his wife, to the discharge of the bankrupts from a liability evidenced by a judgment in the Superior Court of King County, Washington, an order was made and entered on the 23rd day of May, 1947, denying discharge as to that certain judgment debt of Soren N. Jensen and Anna Jensen, his wife, and the marital community composed of them, in Cause No. 352943 in the Superior Court of King County, Washington, and granting discharge as to the remainder.

That on the 29th day of May, 1947, the bankrupts, feeling aggrieved thereat, filed their petition for review, setting forth therein the errors of which he complained.

Summary of Evidence

Soren N. Jensen and Anna Jensen, his wife, filed objections to the discharge of the bankrupts on the ground that their debt was not dischargeable in bankruptcy as being founded upon a wilful and malicious injury to their property. The [4*] matter came on for hearing on April 18, 1947, at which time the bankrupt, Clarence A. Rees, was present in person and was represented by his attorneys. The hearing was continued and the matter came up again regularly on May 6, 1947, at which time it was stipulated in open court by Mary A. Burrus, one of the attorneys for the bankrupts, and Lady Willie Forbus, attorney for the objecting creditors, that the issue raised by the objectors could properly be considered by the Referee and that he could decide said issue. This stipulation was made because of the somewhat involved and perplexing question as to whether or not the objection may properly be presented to the Bankruptcy Court or should be reserved for decision by the court which entered the judgment.

No oral evidence was offered by anyone at the hearing. There was offered and received in evidence from the record in the case of Jensen vs. Rees, Cause No. 352943 in the Superior Court of King County, Washington, the following exhibits:

Bankrupts' Exhibit 1, Photostatic copies

Bankrupts' Exhibit 2, Photostatic copies

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* Page numbering appearing at foot of page of original certified Transcript of Record

Bankrupts' Exhibit 3, Copies of Findings of Fact and Conclusions of Law.

Bankrupts' Exhibit 4, Copy of Decree

Creditors' Exhibit 5 consists of copies of certain records of the King County Property Agent, and was offered and received in evidence by the Referee, who reserved his ruling thereon and later decided the only evidence of any probative value in said exhibit was a notation on the last page thereof that there were no improvements, and that there is no statute making the work sheets of the County Property Agent constructive notice to the public. Therefore, in his opinion the Referee disregarded that exhibit.

The Referee heard oral argument from the attorneys of [5] the respective parties, considered their briefs submitted in support of their several contentions and rendered his decision on objections to release from judgment and made and entered his Findings of Fact, Conclusions of Law, and Order of Discharge of Bankrupt. The contents of all said documents appear from the originals which are herewith transmitted.

Papers Transmitted

1. Objections to Discharge of Bankrupts.
2. Referee's Decision on Objections to Release from Judgment.
3. Findings of Fact and Conclusions of Law.
4. Discharge of Bankrupt.
5. Bankrupts' Petition for Review.

6. Bankrupts' Proposed Summary of Evidence Adduced on Hearing of Objections to Discharge.
7. Authorities submitted by attorneys for bankrupts.
8. Memorandum of Authorities on Question of Debts Not Affected by Discharge of Bankrupts submitted by attorney for creditors.
9. Answering Brief of Clarence A. and Evelyn E. Rees.
10. Supplemental brief of Judgment Creditors.
11. Reply Brief.
12. Bankrupts' Exhibit 1.
13. Bankrupts' Exhibit 2.
14. Bankrupts' Exhibit 3.
15. Bankrupts' Exhibit 4.
16. Creditors' Exhibit 5.

Dated at Seattle, in said District, this 8th day of July, 1947.

Respectfully submitted,

VAN C. GRIFFIN,
Referee in Bankruptcy.

[Endorsed]: Filed July 8, 1947. [6]

[Title of District Court and Cause]

REFEREE'S DECISION ON OBJECTIONS TO RELEASE FROM JUDGMENT

Soren N. Jensen and Anna Jensen, his wife, filed objections to the discharge of the bankrupts from a liability to them evidenced by a judgment in the Superior Court of King County, Washington. In response to notice of hearing, the creditors appeared by their attorney, Lady Willie Forbus, and the bankrupts appeared by Clarence A. Rees, one of the bankrupts, and by David J. Williams and Mary E. Burrus, their attorneys, and in open court stipulated that the issues raised by the objectors could properly be considered by the Referee and that he could decide said issues.

Certified copies of the Findings of Fact, Conclusions of Law, and Decree were offered and received in evidence without objection, and there were offered certified copies of other documents to which objections were made, but all of the offered documents were admitted in evidence with the understanding that their competency, materiality, and probative value would be re-considered in hearing arguments upon and passing upon the merits of the case.

Engaging oral arguments were made at the hearing and exhaustive briefs were filed by the attorneys for the bankrupts and the objecting creditors. The Referee has read with keen interest the many authorities cited, which cover a large number [9] of subjects and cases in which some rather fine distinc-

tions are made, and there may not be complete harmony in all the decided cases. However, the question here presented is really quite simple, and it is this:

> Was the obligation upon which the creditors' judgment was based one for wilful and malicious injuries to property, and is it, therefore, not dischargeable in bankruptcy under Section 17 of the Bankruptcy Act?

The authorities are well-nigh uniform to the effect that a mere conversion of property does not necessarily amount to a wilful and malicious injury, and that in considering the nature of the acts or transactions upon which the liability and judgment rest, consideration may be given to the entire record in the case and if there is any ambiguity or uncertainty, evidence may be offered even outside of the record.

The only exhibit or evidence outside of the record which the Referee might have considered as having probative value was the fifth page of the Creditor's Exhibit 5, which was a certified copy of a work sheet of the King County Property Agent, which contained a notation that there were no improvements. Inasmuch as the Referee knows of no statute making the work sheets of the County Property Agent constructive notice to the public and there was no oral evidence that the contents of this document were brought to the attention of the bankrupts, he has disregarded that exhibit.

Of great and controlling importance in this case are the facts that the buildings belonging to the

Jensens and converted by the Rees' were personal property, had been severed from the realty in a lien foreclosure against "Doc" Hamilton, [10] and had been physically removed from the place they were originally constructed and probably mistakenly placed upon Tax Lot 4, which gave rise to this litigation. It is more logical to believe that when Clarence A. Rees filed his application to purchase Tax Lot 4 (Bankrupts' Exhibit 2, page 5), and made his bid therefore, the sum of $50.00, that he was bidding for the land and not for the buildings, which of themselves were worth $1,000.00 or more. These circumstances and the fact that the bankrupts did not avail themselves of the privilege of taking the witness stand and explaining what motives they had or what possible justifications they could have in converting to their own use the personal property of the judgment creditors, leaves the Findings of Fact and Conclusions of Law upon which the judgment is based unanswerable. (Bankrupts' Ex. 3 & 4).

"Findings of Fact

XVII.

"* * * That the houses, sheds, barns and each structure now upon said North 65 feet have been at all times considered as personalty by the Plaintiffs and the Defendant Skirving; and that at the time of her sale of said property, to the Defendants, Clarence A. Rees and wife, said structures were not included in the sale and no consideration was given for them, or

either of them. That the Defendants Rees and wife never at any time believed they were purchasing said structures, or either of them, having been advised at the time of their purchase, that the buildings were no part of the property purchased.

XVIII.

"That notwithstanding the facts hereinabove set out, the Defendants, Clarence A. Rees and Evelyn A. Rees, his wife, on or about January 20, 1944, took possession of all and every one of the structures hereinabove mentioned, moved into the house and ejected the Plaintiffs' tenants therefrom, and in all respects converted said property to their own uses; and denied the use or possession of same to Plaintiffs and their tenants; and continue to do so up to the present time, although the Plaintiffs collected rent thereon for January and February, 1944, and their tenants remained in possession of said houses during said period. [11]

XIX.

"That the fair market value of the house and other structures upon the North 65 feet of the Defendant Skirving's property so converted by the Defendants', Rees and wife, at the time of the conversion on or about January 20, 1944, was $1,000.00.

Conclusions of Law:

"IV.

"That the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, have converted personal property belonging to the Plaintiffs, consisting of a house, shed, barn and other structures situated on the North 65 feet of the Defendants' property, which property was so located thereon by agreement of the Plaintiffs and Defendant Skirving, and was at all times considered as personal property in which the Defendant Skirving never at any time claimed an interest, and was not sold to the Defendants Rees and no consideration was paid by the Defendants Rees therefor.

That the Defendants Rees and wife have become unjustly and unlawfully enriched by their conversion of Plaintiffs' buildings in the amount of $1,000.00, and Plaintiffs are entitled to judgment therefor."

The principle of law which this Referee thinks is controlling in this case was well expressed in the case of In re Freche, 109 Fed. Rep. 620:

"From the nature of the case the act * * * which caused the injury was wilful, because it was voluntary. The act was unlawful, wrongful and tortuous, and, being wilfully done, it was, in law, malicious. It was malicious because the injurious consequences which followed the wrongful act were those which might naturally be expected to result from it, and which the

defendant must be presumed to have had in mind when he committed the offense. 'Malice' in law simply means a depraved inclination on the part of a person to disregard the rights of others, which intent is manifested by his injurious acts. While it may be true that in his unlawful act Freche was not actuated by hatred or revenge or passion towards the plaintiff, nevertheless, if he acted wantonly against what any man of reasonable intelligence must have known to be contrary to his duty, and purposely prejudicial and injurious to another, the law will imply malice * * *.

"The judgment here mentioned comes, as we think, within the language of the statutes reasonably construed * * *." [12]

See also:

Tinker v. Colwell, 193 U. S. 463;
Remington on Bankruptcy, Vol. 7, 813;
Bever v. Swecker, 116 NW 704;
Smith v. Ladrie, 6, ABR NS 218.
6, ABR NS 218.

The case of Emigh v. Lohnes, 21 Wash. (2) 913, is relied upon and extensive excerpts quoted, but a reading of that case will disclose that the facts of that case were very different from the facts in this case. In fact, that was not a judgment based upon conversion at all and, therefore, the decision in that case could have little or no influence on the decision in this case. However, in the decision

of this Emigh case there is an extensive quotation from the case of In re La Porte, 54 Fed. Suppl. 911, but the decision of this last-named case does not go any further than to hold that wilful and malicious injury does not follow as a matter of course from every act of conversion. There are many cases cited in the answering brief of the bankrupts in which the liability was based upon conversion, but the facts of which would not establish a wilful and malicious injury to property. Where the original taking is rightful, as where one loans property to another, and then without fault of the borrower the property is destroyed, there would be in law a conversion but it would not be wilful and malicious injury to property. In the case of Brown v. Garey, 196 NE 12, cited and quoted from in the brief of bankrupts, it was pointed out that the courts must examine the circumstances of each particular case and say whether it finds among them the elements which the law has come to accept as badges of wilfulness and legal malice. If a brokerage firm which accepts securities for safe-keeping and is trustee for the owner co-mingles these and pledges them as its own for a loan or sells them, it is guilty of malicious [13] injury to property, but a brokerage company with many employees who keeps its own securities and those of its customers segregated, but by some inadvertance a customer's securities are pledged for the broker's loan, the broker would be guilty of conversion but not malicious injury to property.

In this case the Reeses did not come into possession of this personal property by the consent of the owner, nor by inadvertence. The Findings of Fact and Conclusions of Law above quoted negative any contention that when they bought the property they thought the buildings were attached thereto as realty and that they were, therefore, the owners thereof. They did not so testify and the evidence established that they designedly obtained possession of these buildings and converted them to their own use and, therefore, the judgment based upon said conversion is not dischargeable in bankruptcy.

Findings of Fact and order may be presented in accordance with this decision.

Dated at Seattle, this 15th day of May, 1947.

VAN C. GRIFFIN,
Referee in Bankruptcy.

[Endorsed]: Filed July 8, 1947. [14]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Matter coming on for hearing on May 6, 1947, before the Undersigned Referee in Bankruptcy, pursuant to order fixing hearing thereon, having been continued from April 18, 1947, upon the objections of Soren N. Jensen and Anna Jensen, his wife, and the marital community composed of them, judgment creditors of the above-named bankrupts, upon the ground that their judgment

listed among the provable debts of the bankrupts is not dischargeable in bankruptcy under Section 17 of the Bankruptcy Act; the bankrupts appearing in person and through their attorneys of record, Colvin & Williams and Mary E. Burrus, and the judgment creditors appearing in person and through their attorney of record, Lady Willie Forbus, and the Trustee heretofore appointed by the Court, Kenneth S. Treadwell, appearing in person; and the bankrupts and judgment creditors having stipulated in open court at the hearing on April 18, 1947, that the Referee assume jurisdiction and determine the dischargeability of the judgment debt; and the parties hereto having submitted certain Exhibits to the Court, and having also submitted exhaustive briefs upon the questions of law involved in the proceeding; and the Referee having considered the objections to the Exhibits and deferred his ruling thereon and announced that the whole matter would be taken under advisement and a written opinion filed herein, thereupon heard the oral argument of counsel; and now having read and considered the briefs of all counsel, and considered the objections to certain [15] Exhibits, and having heretofore filed its memorandum opinion herein, and being further fully advised in the premises, now, therefore, the Court hereby makes the following

Findings of Fact

I.

That the judgment creditors herein obtained a judgment against the bankrupts on June 5, 1945, in

the Superior Court of King County, Washington, in Cause No. 352943, for $1000.00 damages and $64.90 court costs, which said judgment remained unsatisfied at the time the judgment creditors were adjudged bankrupt. That said judgment is listed among the debts of the bankrupts, from which they seek a discharge.

II.

That the judgment was based upon a suit for damages for the intentional and unlawful conversion of certain buildings belonging to the judgment creditors situated upon real property purchased by the bankrupts, which buildings were severed from the realty and were considered and known to all the parties, including the bankrupts, to be the personal property of the judgment creditors, and were not included in the sale of the real estate, and no consideration was paid therefor.

These facts are borne out by the Findings of Fact and Conclusions of Law of the King County Superior Court, upon which the judgment was based and which have been admitted in certified form by agreement of the parties hereto as Exhibits 3 and 4 before this Court, pertinent portions of which are as follows:

"Findings of Fact

XVII.

"* * * That the houses, sheds, barns and each structure now upon said North 65 feet have been at all times considered as personalty by the Plaintiffs and the Defendant Skirving; and

that at the time of her sale of said property, to the Defendants, Clarance A. Rees and wife, [16] said structures were not included in the sale and no consideration was given for them, or either of them. That the Defendants Rees and wife never at any time believed they were purchasing said structures, or either of them, having been advised at the time of their purchase, that the buildings were no part of the property purchased.

XVIII.

"That notwithstanding the facts hereinabove set out, the Defendants, Clarance A. Rees and Evelyn A. Rees, his wife, on or about January 20, 1944, took possession of all and every one of the structures hereinabove mentioned, moved into the house and ejected the Plaintiffs' tenants therefrom, and in all respects converted said property to their own uses; and denied the use or possession of same to Plaintiffs and their tenants; and continue to do so up to the present time, although the Plaintiffs collected rent thereon for January and February, 1944, and their tenants remained in possession of said houses during said period.

XIX.

"That the fair market value of the house and other structures upon the North 65 feet of the Defendant Skirving's property so converted by the Defendants, Rees and wife, at the time of the conversion on or about January 20, 1944, was $1,000.00.

"Conclusions of Law

IV.

"That the Defendants, Clarance A. Rees and Evelyn E. Rees, his wife, have converted personal property belonging to the Plaintiffs, consisting of a house, shed, barn and other structures situated on the North 65 feet of the Defendants' property, which property was so located thereon by agreement of the Plaintiffs and Defendant Skirving, and was at all times considered as personal property in which the Defendant Skirving never at any time claimed an interest, and was not so sold to the Defendants' Rees and no consideration was paid by the Defendants Rees therefor.

"That the Defendants Rees and wife, have become unjustly and unlawfully enriched by their conversion of Plaintiffs' buildings in the amount of $1,000.00, and Plaintiffs are entitled to judgment therefor."

That upon the facts submitted to this Court and the above Findings and Conclusions, the bankrupts took the personal property of the judgment creditors, knowing it to be their property, and intentionally used it and continue to use it as their own and now assert ownership of it. [17]

III.

That among the exhibits offered at the hearing of this matter was Judgment Creditors' Exhibit No. 5, consisting of a certified copy of a work sheet

of the King County Property Agent, which contained a notation that there were no improvements upon Lot 4 which was property adjoining the Skirving property (on which the buildings were situated) purchased by the bankrupts, and which property the bankrupts made application to purchase for $50.00 from King County just after they had acquired the Skirving property. It was offered for the purpose of showing that the bankrupts knew they were purchasing vacant land and that the buildings were not on Tax Lot 4.

The bankrupts objected to the introduction of the Exhibit on the ground that it was not a part of the original record in the Superior Court action.

There is no statute making the work sheets of a county property agent constructive notice to the public; and there was no evidence introduced at the hearing to show that the contents of that portion of the Exhibit was ever brought to the attention of the bankrupts.

Dated and Done in Open Court this May 23, 1947.

VAN C. GRIFFIN,
Referee in Bankruptcy.

And from the foregoing Findings of Fact, the Court makes the following

Conclusions of Law

I.

That the facts upon which the judgment of the King County [18] Superior Court were based and the facts presented to this Court show a wilful

and intentional conversion of the judgment creditors' property, and constitute a wilful and malicious injury to their property; and the judgment debt is, therefore, not dischargeable in bankruptcy; and the judgment creditors are entitled to an order excluding their judgment from the provable debts of the bankrupts.

II.

That the objection of the bankrupts to the introduction of Exhibit No. 5 of the judgment creditors is sustained, and the Exhibit is refused in evidence.

III.

To all of which Findings and Conclusions the Bankrupt Rees excepts.

Dated and Done in Open Court this May 23, 1947.

VAN C. GRIFFIN,
Referee in Bankruptcy.

Presented by
/s/ LADY WILLIE FORBUS,
Attorney for Judgment
Creditors.

Copy Received May 19, 1947. Colvin & Williams, Attorneys.

Copy mailed by agreement May 19, 1947. Kenneth S. Treadwell, Trustee.

[Endorsed]: Filed July 8, 1947. [19]

[Title of District Court and Cause.]

DISCHARGE OF BANKRUPT

At Seattle, in said District, on the 23rd day of May, 1947.

It appearing that Clarance A. Rees and Evelyn E. Rees, a marital community, of Kent, in the County of King, State of Washington, were duly adjudged bankrupts on a petition filed by them on the 10th day of April, 1946, and that said bankrupts appeared and were examined at a meeting of creditors concerning all matters which might affect the administration and settlement of their estate and their application for and the granting of their discharge; and

It further appearing that, after due notice by mail, objections to the discharge of said bankrupts from the judgment debt of Soren N. Jensen and Anna Jensen, his wife, and the marital community composed of them, were filed within the time fixed by the court, were heard upon notice as required by law, and were sustained,

It is ordered that the said Clarance A. Rees and Evelyn E. Rees, a marital community, be and they hereby are discharged from all debts and claims which are by the Act of Congress relating to bankruptcy made provable by said Act against their estate, except such debts as are, by said Act, excepted from the operation of a discharge in bankruptcy, and in particular except that certain judgment debt of Soren N. Jensen and Anna Jensen, [20] his wife, and the marital community composed

of them, in Cause No. 352943 in the Superior Court of King County, Washington, in the amount of $1,064.90. That the Bankrupts Rees except to each and every Finding and Conclusion and to the whole thereof of said Findings and to the exemption of the debt to said creditors Jensen from the discharge herein.

VAN C. GRIFFIN,
Referee in Bankruptcy.

Presented by:

LADY WILLIE FORBUS,
Attorney for Soren N. Jensen
and Anna Jensen, His Wife.

[Endorsed]: Filed July 8, 1947. [21]

[Title of District Court and Cause.]

ORDER SUSTAINING DECISION OF REFEREE

This Matter having come on for hearing before the Honorable Lloyd L. Black, one of the judges of the above-entitled Court, on August 6th, 1947, upon the Bankrupts' appeal from the decision of the Honorable Van C. Griffin, Referee in Bankruptcy, dated May 23, 1947, excepting from discharge of the bankrupts a certain judgment debt of Soren N. Jensen and Anna Jensen, his wife, and the marital community composed of them, in Cause No. 352943 in the Superior Court of King County, Washington, in the amount of $1064.90, the Bankrupts

appearing in person and by their counsel, Colvin & Williams and Mary E. Burrus, and the judgment debtors, appearing in person and by their counsel, Lady Willie Forbus; whereupon the Court proceeded with the hearing; and each counsel having argued the facts and the law to the Court, and having submitted written briefs in support thereof, the Court thereupon took the matter under advisement; and thereafter the Court on September 30, 1947, having orally announced in open court in the presence of counsel and their representatives that the decision of the Referee dated May 23, 1947, is sustained: [77]

Now, Therefore, Be It Hereby Ordered, Adjudged and Decreed That the decision of Van C. Griffin, Referee in Bankruptcy of May 23, 1947, excepting from discharge the judgment debt of Soren N. Jensen and Anna Jensen, his wife, and the marital community composed of them, in Cause No. 352943 in the Superior Court of King County, Washington, in the amount of $1064.90, be and the same hereby is sustained.

Done in Open Court this 13th day of October, 1947.

LLOYD L. BLACK,
Judge.

Presented by
/s/ LADY WILLIE FORBUS,
Attorney.

[Endorsed]: Filed Oct. 13, 1947. [78]

[Title of District Court and Cause.]

COURT'S ORAL DECISION
September 30, 1947

Black, J.

The Court: I have asked counsel in two matters to attend at this time. One is in connection with the action of United States of America versus Gephart and wife. Are counsel present in that matter?

Mr. Dennis: Yes, your Honor.

Mr. Todd: Yes, your Honor.

The Court: The other is in connection with the petition for review in the bankruptcy matter of Clarence A. Rees and Evelyn E. Rees as a marital community. Who are present?

Mr. Williams: I represent the bankrupt, if your Honor please.

A Woman Spectator (In Rear of Court Room): Judge Black's secretary said I could come for Lady Forbus. I am in her office.

The Court: You are her secretary? You, too, may come forward. [79]

I am going to take up the matter of the Rees bankruptcy first because what I have to say is going to be less lengthy.

This matter has been before the Court for some time, having been submitted to the Court in August. In brief, the referee, upon the stipulation of counsel both for the bankrupts and for the objecting creditors that he might decide the effect of the discharge as against a judgment debt of Soren N. Jensen and Anna Jensen, his wife, did make a decision.

Pursuant to that decision, he entered a discharge which specifically recited that that certain judgment debt of Soren N. Jensen and Anna Jensen, his wife, and the marital community composed thereof in cause No. 352,943 in the Superior Court of the State of Washington for King County in the amount of $1,064.90 was not covered by the discharge. The bankrupts petitioned for a writ of review. Such discharge was entered on May 23, 1947. The bankrupts and the judgment creditors agreed as aforesaid that the Referee in Bankruptcy might and should determine the effect of the discharge.

The bankrupts are not complaining that the Referee acted. The bankrupts on the contrary state that the Referee acted incorrectly.

I have given serious consideration to the records of the entire bankruptcy matter and to the records as admitted [80] in evidence in the Superior Court action upon which the judgment of Mr. and Mrs. Jensen was based. I have also given serious consideration to the respective briefs of the parties and been aided by the oral argument which was presented to me in August.

If the matter were before me as a matter of first impression and without restriction by judicial decisions of courts which bind me, I would have no great difficulty.

Section 35 of Title 11, U.S.C.A., provides insofar as applicable:

> "A discharge in bankruptcy shall release a bankrupt from all of his provable debts,

whether allowable in full or in part, except such as * * * (2) are liabilities * * * for wilful and malicious injury to the person or property of another."

With no decisions to guide my course, I am inclined to believe that I would consider that language as not protecting the judgment of Mr. and Mrs. Jensen. But I am bound and controlled by a forest of authority. The weight of authority is to the effect that those simple words include intentional conversation of the kind which Judge Ronald in his findings determined occurred on the part of the bankrupts as against the property of Mr. and Mrs. Jensen. As a result, I feel [81] that in the light of the authorities which control me I must sustain, and therefore I do sustain the decision of the Referee.

The opinion of the Referee as found in the files displays that sufficient study of authorities and consideration of the findings of the Superior Court judge as make unnecessary any substantial discourse by me.

It may be that had I heard all the evidence which was presented to Judge Ronald I might have come to a different conclusion. On the other hand, had I heard it all, I might have decided as did he, and I might have entered findings of fact which were substantial duplicates of those which he signed.

If Judge Ronald were mistaken, the remedy for Mr. and Mrs. Rees was by appeal to the state supreme court. No appeal was taken.

I may say this further, that the matter has been before me preliminarily to such a substantial extent that I was quite well acquainted with the authorities and with the arguments prior to its submission to the Referee. In the first place, the bankrupts asked for the privilege of amending their schedules so as to show the correct address of judgment creditors. This application for amendment was most vigorously contested by counsel for the judgment creditors, who contended the Court had no authority to allow an [82] amendment. I decided that in favor of the bankrupts' feeling that under the showing made the allowance of amendment was fair and equitable. Subsequently, but very shortly thereafter, application was again made to the Court by the bankrupts for an order of this Court restraining further garnishment proceedings. Even more vigorous opposition, if that be possible, was made by Senator Forbus contending I had no authority. I decided that contention against her, among other things, for the reasons set forth in my oral decision of November 26, the transcript of which appears in the file. I said, "It seems to me that until the bankrupts have had a reasonable opportunity to secure, if they are entitled to secure, a discharge based on the amendment, that the bankrupts should not be harassed in this forum and in another forum at the same time."

I made it clear on that day that I was not obligating myself to do more than what I could to avoid a multiplicity of actions and a multiplicity

of forums at the same time. I believe that my rulings both as to the amendment and as to the restraining order were correct. The law gave the bankrupts an opportunity to have their day in court and their day in a single court so that they might present their contentions without the threat of some other court acting simultaneously. In other words, I recognize [83] that in law as well as in physics the same body cannot occupy two spaces at the same time.

I feel I have no right to go further. I would not be justified in overruling the Referee by virtue of the feeling that I have that were there no decisions controlling me that my opinion might be different. I can and will say that I am not absolutely certain that the Referee was correct. However, the records here, the arguments and the authorities sufficiently indicate that he is correct that I would have no right to reverse his conclusion. I am not indicating that my mind is evenly balanced as to whether or not the Referee is correct. Even in that event I take it that I should allow his ruling to stand. I will go further and say that I think it considerably more probable that he is right than that he is mistaken. So, of course, his decision is sustained.

Thank you for coming.

[Endorsed]: Filed Oct. 13, 1947. [84]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Soren N. Jensen and Anna Jensen, his wife, Respondents, and Lady Willie Forbus, their attorney, and to the Clerk of the Above-Entitled Court:

Notice Is Hereby Given that Clarance A. Rees and Evelyn E. Rees, his wife, bankrupts abovenamed, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the order entered in the above cause by the Honorable Lloyd Black on the 13th day of October, 1947, insofar as said order sustains the Referee's decision excepting the debt of respondents, Soren N. Jensen and Anna Jensen, his wife, from discharge in bankruptcy.

COLVIN & WILLIAMS,
Attorneys for Petitioners.

[Endorsed]: Filed Oct. 15, 1947. [87]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing typewritten transcript of record, consisting of pages numbered 4 to 96, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by the Stipulation and

Designation of Contents of Record on Appeal filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle and that the same, together with Bankrupts' Exhibits numbered 1 to 4, inclusive, and Creditors' Exhibit numbered 5, the originals of which are sent up as a part of this record in accordance with the stipulated order of the Court, constitute the record on appeal from the Judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit, dated October 13, 1947.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for preparing record on appeal [97] herein to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's fees for making record, certificate or return:

None pages at 40c	$
93 pages at 10c	9.30
Appeal fee (Notice)	5.00
Total	$14.30

I further certify that the costs of this record have been paid by the attorneys for appellants.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 9th day of January, 1948.

[Seal] MILLARD P. THOMAS,
Clerk,
By /s/ TRUMAN EGGER,
Chief Deputy.

BANKRUPTS' EXHIBIT No. 1

In the Superior Court of the State of Washington for King County

No. 352943

SOREN N. JENSEN and ANNA JENSEN, Husband and Wife,

Plaintiffs,

vs.

CLARENCE A. REES and EVELYN E. REES, Husband and Wife,

Defendants.

NOTICE OF TRIAL AMENDMENT

Notice Is Hereby Given that at the opening of the trial on the merits in the above entitled matter on September 5th, 1944, defendants will ask leave to amend their Answer and Affirmative Defense to allege that the property involved in this action was not improved by a five-room dwelling house or any dwelling house whatsoever and it had no improvements except possibly one or two sheds of little or no value on said property.

[Seal] /s/ DAVID J. WILLIAMS and
MARY E. BURRUS,
Attorneys for Defendants.
660 Central Building,
Seattle 4, Washington.

[Endorsed]: Filed August 31, 1944.

Bankrupts' Exhibit No. 1—(Continued)

In the Superior Court of the State of Washington for King County

No. 352943

SOREN N. JENSEN and ANNA JENSEN, Husband and Wife,

Plaintiffs,

vs.

CLARENCE A. REES and EVELYN E. REES, Husband and Wife,

Defendants.

MOTION TO AMEND SUMMONS AND COMPLAINT BY ADDING A NEW PARTY, AND NEW CAUSE OF ACTION.

Come now the Plaintiffs, through their attorney of record, Lady Willie Forbus, and move the Court for leave to amend the Summons and Complaint in the above entitled action by adding one Cora J. Nessly, also known as Cora J. Skirving, as an additional Defendant herein, with proper words and allegations to charge her; and to plead a new cause of action to conform to certain newly discovered proof for the recovery of the real property and improvements involved in this action.

This motion is based upon the records and files in the above entitled action, certain surveys in the

Bankrupts' Exhibit No. 1—(Continued)

office of the County Engineer of King County, Washington, and upon the affidavit of Plaintiffs' counsel hereto attached.

LADY WILLIE FORBUS,
Attorney for Plaintiffs, 1601 Northern Life Tower,
Seattle, Washington.

State of Washington,
County of King—ss.

Lady Willie Forbus, being first duly sworn, upon oath deposes and says:

That she is the Attorney of record for the Plaintiffs in the above entitled action.

That this is an action in equity to set aside a certain County Treasurer's Tax Deed issued to the Defendants herein covering certain property allegedly belonging to the Plaintiffs, and to forever quiet title to the property described in said tax deed in the Plaintiffs.

That at the time suit was brought and the issues framed by the litigating parties, it was the belief of all said parties Plaintiffs and Defendants that certain improvements, consisting of a five-room house, outhouse and sheds of the reasonable value of approximately $2,000.00, were located upon the property described in the Tax Deed and likewise described in Plaintiffs' and Defendants' pleadings.

That an official and professional survey of the property described therein now reveals that the improvements alleged in the pleadings are not within

Bankrupts' Exhibit No. 1—(Continued)

the boundaries of said property, but, on the other hand, said improvements are located upon the property of the owner of the land adjoining to the South and approximately sixty-five (65) feet distant from the boundary line of the property involved in this litigation.

That one Cora J. Nessly, now known as Cora J. Skirving, is the owner of the legal title to the adjoining property.

That the said Cora J. Nessly, now Skirving, sold said adjoining property on real estate contract to the Defendants in this action on or about January 13, 1944, and that said contract is in force at the present time, no deed having been issued by her to Defendants up to the present time.

That at the time of the sale on contract by said adjoining property owner to Defendants, no mention was made of the improvements upon said land; and at no time was there within the contemplation of the parties that any improvements existed upon the property or any consideration was being paid therefor.

That, on the other hand, the Plaintiffs and the Defendants and the said Cora J. Nessly, now Skirving, at all times believed that the improvements were upon the property of the Plaintiffs involved in the Tax Deed and in this litigation; and that Defendants have just prior to the trial of this action, and upon discovery of the facts set out herein, given notice to Plaintiffs that they will ask leave to amend their Answer and affirmative defense so as

Bankrupts' Exhibit No. 1—(Continued)

to deny that the aforesaid improvements are upon the property of Plaintiffs described in the Tax Deed and in this litigation.

That the improvements described therein are actually situated, according to survey, upon the North 65 feet of the Southwest Quarter of the Northeast Quarter of Section 2, Township 21 North, Range 5 E. W. M., lying Southeasterly of the Northern Pacific Railway Right of Way and Westerly of Jenkins Creek, in King County, State of Washington, which property is included in the adjoining property sold by Cora J. Nessly, now Skirving, to Defendants.

That since June, 1929, a period of sixteen years, the Plaintiffs herein have been in open, notorious, continuous possession of the aforesaid north 65 feet, without let or hindrance, interference or claim of any nature whatsoever of the said Cora J. Nessly, now Skirving, with her personal knowledge, and remained in possession and continuously claimed title and ownership of said property from June, 1929, until just prior to the institution of this action when the Defendants ejected Plaintiffs' tenants therefrom and took forcible possession of same.

That Plaintiffs have acquired title to the aforesaid North 65 feet by adverse possession from the said Cora J. Nessly, now Skirving, and the Defendants herein, and is entitled to have her title to said property quieted against her and the Defendants and the whole world.

Bankrupts' Exhibit No. 1—(Continued)

That in order to have a full determination of the rights of all the parties to this action, and in order to avoid a multiplicity of suits, it is necessary that the said Cora J. Nessly, now Skirving, be joined as an additional Defendant herein; and that the aforesaid North 65 feet of the Southwest Quarter of the Northeast Quarter, lying Southeasterly of the Northern Pacific Right of Way and Westerly of Jenkins Creek, situated in Section 2, Township 21 North, Range 5 East, W. M., King County, State of Washington, be included in the property covered in this litigation; and that Plaintiffs be permitted to add as an additional cause of action against the Defendants herein and the newly joined Defendant, Cora J. Nessly, now Skirving, the aforesaid and additional facts to establish her right to have the aforesaid property and the improvements thereon set aside to her and quieted in her, free of any right, title, or interest of the Defendants or Cora J. Nessly, now Skirving, to same.

That this motion is not made to hinder or delay the trial of this action. That Plaintiffs desire a speedy determination of their rights and offer to file an amended complaint within a period of three days, or such shorter time as the Court may require. That their sole reasons for interposing this motion is to have a complete determination of the controversy between the parties and all parties in interest and to avoid another suit to establish their right to

Bankrupts' Exhibit No. 1—(Continued)

the North 65 feet of the adjoining property and their improvements thereon.

LADY WILLIE FORBUS.

Sworn to and Subscribed before me on this September 2nd, 1944.

GERALD W. MEIER,

Notary Public, in and for the State of Washington, residing in Seattle.

[Endorsed]: Filed September 2, 1944.

In the Superior Court of the State of Washington for King County

No. 352943
(In Equity)

SOREN N. JENSEN and ANNA JENSEN, Husband and Wife, Plaintiffs,

vs.

CLARENCE A. REES and EVELYN E. REES, Husband and Wife, and CORA J. NESSLY, now CORA J. SKIRVING, Defendants.

AMENDED COMPLAINT

Come now the Plaintiffs and for a first cause of action against the Defendants allege:

I.

That Plaintiffs and Defendants are now and during the times herein mentioned have been residents of King County, Washington.

Bankrupts' Exhibit No. 1—(Continued)

II.

That on or about June 14, 1929, Plaintiffs purchased on real estate contract, from the Seattle Development Company of Seattle, Washington, the following described property:

> That portion of Government Lot No. 2, Section 2, Township 21 North, Range 5 East W. M., lying Southeasterly of the Northern Pacific Railway Company's right of way and the West 330 feet of that portion of Government Lot No. 1, of said Section 2, lying southerly of said right of way, all in King County, Washington.

That said contract was recorded June 27, 1929, in Vol. 1435 of Deeds, page 409, under Auditor's File No. 2545354, records of the office of County Auditor of King County, Washington.

III.

That at the time Plaintiffs purchased the aforesaid property on real estate contract as above set out, the National City Bank of Seattle, Washington, held a first real estate mortgage upon the same; and that said mortgage was thereafter foreclosed in Cause No. 236197 of the Superior Court of King County, Washington, a decree of foreclosure having been entered therein in due course.

That thereafter and on or about December 19, 1931, said property was offered for sale at public

Bankrupts' Exhibit No. 1—(Continued)

auction in satisfaction of the judgment aforesaid, whereupon the Plaintiffs became the best and highest bidder for the same, and thereafter on January 22, 1932, the Superior Court of King County ordered the sale confirmed. That thereafter the Sheriff of King County issued a Sheriff's Deed to Plaintiffs covering said property, which deed was recorded on December 20th, 1932, in Volume 1518 of Deeds, page 201, records of the County Auditor of King County, Washington, under Auditor's file No. 2744699.

IV.

That in the year 1928 the aforesaid property was segregated by the Assessor's office of King County, Washington, as follows:

(a) That portion of said Government Lot 2, lying southeasterly of the Northern Pacific Railroad Company right of way and Westerly of the James B. Kline Road, Section 2, Township 21 North, Range E. W. W. M., situated in King County, Washington, being known as Tax Lot No. 4.

(b) That portion of said Government Lot 2, lying southeasterly of the Northern Pacific Railroad Company right of way and Easterly of the James B. Kline Road, together with the West 330 feet of Government Lot 1, lying southerly of said railroad right of way, situated in King County, Washington, being known as Tax Lot No. 46.

Bankrupts' Exhibit No. 1—(Continued)

V.

That both the real estate contract issued in 1929 and the Sheriff's Deed issued in 1932, to Plaintiffs, contained the legal description set out in Paragraph II as one single tract.

That at no time during the times hereinbefore or hereinafter mentioned, did the Plaintiffs learn of the segregation of their property into Tax Lot No. 4 and Tax Lot No. 46; nor did they learn of said segregation until just prior to the institution of this action.

VI.

That during the year 1929, after the Plaintiffs purchased the aforesaid property, one Edna D. Hanson purchased the vendor's equity in Sub-division (b) above, being Tax Lot No. 46, from the Seattle Development Company, subject to Plaintiffs' contract of purchase.

VII.

That the general taxes on Tax Lot No. 46, being Subdivision (b) above, were paid December 31, 1929, by the said Edna D. Hanson or her agents, and thereafter by the Plaintiffs in this action.

That the general taxes on Tax Lot No. 4, being Subdivision (a) above, were unpaid for the years 1924 to 1927, inclusive, and on June 25th, 1930, King County foreclosed its certificate of delinquency for said general taxes in Cause No. 232197, Superior

Bankrupts' Exhibit No. 1—(Continued)

Court of King County, Washington, which action proceeded to judgment and a tax deed covering Tax Lot No. 4 was issued to said King County on April 21st, 1932, as shown by King County Auditor's File No. 2718790, records of King County. That Plaintiffs had no knowledge of the facts herein set out until just prior to the institution of this action.

VIII.

That during the month of March, or thereabouts, 1930, Plaintiffs went to the King County Treasurer's office at the Courthouse in Seattle, Washington, and requested a tax statement of all their general taxes due to date, and offered to pay the same, having cash in his hands so to do. That the Plaintiff, Soren N. Jensen, was then and there informed by the Deputy Treasurer on duty in the office at the time, that the taxes had been paid by the said Edna D. Hanson, through her father John A. Hanson; and that no taxes were then due at the time.

That being ignorant of any segregation and with no knowledge that taxes then due on Tax Lot No. 4 (Subdivision (a) herein) had not been paid, being misled and replying upon the statements made to him by the Deputy Treasurer, the Plaintiff left the office without paying the same.

That being still without knowledge of any segregation and relying upon the statements made to him by the County Treasurer of King County, the Plaintiffs continued to pay from year to year the taxes shown upon tax statements issued out of the

Bankrupts' Exhibit No. 1—(Continued)

office of the County Treasurer, at all times believing that the property described therein was all of the property of the parties purchased on contract.

IX.

That since June 14, 1929, when Plaintiffs acquired the aforesaid property and up to the present time, Plaintiffs have been in the continuous, open and uninterrupted possession of said property.

X.

That said property consists of vacant, pasture land of approximately 1.5 acres.

XI.

That on or about January 20, 1944, King County conveyed to the Defendants herein under Tax Deed from the Treasurer of King County, recorded January 24, 1944, in Volume 2196 of Deeds, Page 528, under Auditor's File No. 3361972, records of said County, the property acquired by foreclosure on April 21st, 1932, as follows:

(a) That portion of said Government Lot 2, lying Southeasterly of the Northern Pacific Railroad right of way and Westerly of the James B. Kinne Road, Section 2, Township 21 North, Range 5 E W M, situated in King County, Washington, being known as Tax Lot No. 4.

said Defendants being Clarence A. Rees and Evelyn E. Reese, his wife.

Bankrupts' Exhibit No. 1—(Continued)

That said sale was made without the knowledge of Plaintiffs, and they did not learn of any of the transactions connected with the acquisition of said property or its sale to the Defendants, Clarence E. Rees and Evelyn E. Rees, his wife, until on or about the 14th day of January, 1944, when the Defendant, Clarence A. Rees, demanded immediate possession of said property from the Plaintiffs and their tenants.

XII.

That the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, paid to King County Treasurer the sum of Fifty (50) Dollars for said property, together with the costs of sale thereof, amounting to approximately $9.00.

That at the time of the purchase of said property the Defendants Rees and wife knew the value of said property to be greatly in excess of the amount paid, and also knew that Plaintiffs were ignorant of the pending proceedings for the sale of said property by the Treasurer to them.

XIII.

That at the time of the issuance of the deed to Defendants Rees and wife, the Plaintiffs had tenants upon said property and that Defendants Rees and wife demanded that said tenants immediately leave the premises and deliver up physical possession to them; and that immediately thereafter the

Bankrupts' Exhibit No. 1—(Continued)

Defendants Rees and wife occupied the same and so occupy it at the present time, over the objections of Plaintiffs.

XIV.

That the Plaintiffs tender herewith the sum of One Hundred (100) Dollars, to repay Defendants Rees and wife for all sums expended by them in payment for the land and all other necessary expenses incurred by them in connection therewith, and hereby offer to pay any further sums unforeseen by Plaintiffs at this time for the purpose of reimbursing the Defendants Rees and wife in full for all necessary sums by them paid.

XV.

That the Plaintiffs are now being denied full use and enjoyment of their property by the Defendants Rees and wife; that said Defendants have unlawfully and wrongfully taken possession of said property, and unlawfully and wrongfully withhold said property from Plaintiffs.

And as a second cause of action, Plaintiffs allege:

I.

That at the time Plaintiffs acquired the aforesaid property on June 14, 1929, and later by Sheriff's deed on December 20, 1932, the Defendant, Cora J. Skirving, then Cora J. Nessly owned the following described land adjoining Plaintiffs' above described Tax Lot No. 4 along the south boundary line thereof, to-wit:

Bankrupts' Exhibit No. 1—(Continued)

That portion of the Southeast Quarter of the Northwest quarter of Section 2, Township 21 North, Range 5 East W M, lying East of the Northern Pacific Railway Right of Way; and the West 990 feet of the Southwest Quarter of the Northeast Quarter of said Section, Less the Northern Pacific Railway Right of Way; and Less the South 660 feet of the East 660 feet; Less portion of the North 660 feet lying Easterly of Jenkins Creek; and Less portion of the South 330 feet of the West 330 feet lying Easterly of Jenkins Creek, Together with a right of way for road over that portion of the North 25 feet of the Southwest Quarter of the Northeast Quarter lying between Jenkins Creek and Soos Creek-Berrydale Road; Except roads, situated in King County, Washington.

II.

That on or about January 13, 1944, the Defendant, Cora J. Skirving, formerly Cora J. Nessly, sold the aforesaid property on real estate contract to the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, which said contract was recorded in the office of the County Auditor of King County, Washington, on April 10, 1944, in Volume 2218 of Deeds, at page 397, under Auditor's File 3378923, records of said County.

That said Defendant, Cora J. Skirving, formerly Nessly, delivered possession of said property to the

Bankrupts' Exhibit No. 1—(Continued)

Defendants Rees and wife, who immediately thereafter took possession of same and are in possession at the present time.

III.

That since on or about June 14, 1929, a period of approximately sixteen years, Plaintiffs have been in open, notorious, continuous possession of the North sixty-five (65) feet of the property hereinabove described in Paragraph I of Plaintiffs' Second Cause of Action herein, without let or hindrance, interference or claim of any nature whatsoever of the said Defendant, Cora J. Skirving, formerly Cora J. Nessly, with her personal knowledge.

That Plaintiffs during said time built and maintained roads and driveways thereon, pastured their cows, and built, moved onto, and maintained a five room house, outhouses and sheds thereon, rented said property to tenants and collected rentals thereon, and in all manner and ways exercised ownership of said property and remained in possession and continuously claimed title and ownership of said North 65 feet until just prior to the institution of this action when the Defendants Rees and wife ejected Plaintiffs' tenants therefrom and took forcible possession of same from Plaintiffs.

That Plaintiffs have held said North 65 feet of the property described in Paragraph I of this Second Cause of Action adversely to the Defendant, Cora J. Skirving, formerly Cora J. Nessly, and the Defendants Rees and wife since June 14, 1929, and

Bankrupts' Exhibit No. 1—(Continued)

now claim ownership of same, and that they are entitled to have their title to same quieted against each of the Defendants in this action.

IV.

That at the time the Defendants Rees and wife purchased the property described in Paragraph I of this Second Cause of Action from Cora J. Skirving, formerly Nessly, neither of the Defendants herein knew that the improvements described in Paragraph III of this Second Cause of Action were upon the property of the Defendant, Cora J. Skirving, formerly Nessly, and that said improvements were no part of the consideration of said sale.

V.

That Plaintiffs have been wrongfully denied the use and income from said property since March 1, 1944, the fair rental value thereof being $20.00 per month, or a total of seven (7) months to date, or the sum of One Hundred Forty ($140.00) Dollars.

VI.

That Plaintiffs' occupancy, use and possession of the aforesaid North 65 feet of the property of the Defendants described in Paragraph I of Plaintiffs' Second Cause of Action arose from the establishment of a boundary line between Plaintiffs' and Defendants' property in 1929, at which time it was understood and agreed between Plaintiffs and the

Bankrupts' Exhibit No. 1—(Continued)

Defendant Cora J. Skirving, formerly Nessly, that the property of the Plaintiffs described in Plaintiffs' First Cause of Action as Tax Lot 4, included the North 65 feet of Defendants' property.

That at the time Defendants Rees and wife purchased said property from the other Defendant, Cora J. Skirving, formerly Nessly, said Defendants laid no claim to the North 65 feet thereof; but at all times believed that said sixty-five feet and the improvements thereon were a part of Tax Lot 4 acquired by them purportedly by County Treasurer's Deed on January 20, 1944.

Wherefore, Plaintiffs pray as follows:

I. That, as to Plaintiffs' First Cause of Action, the County Treasurer's deed dated January 20th, 1944, issued to the Defendants herein, be set aside, cancelled and held for naught; that the Defendants Rees and wife be required to deliver up to the Plaintiffs the property purportedly sold to them by the County Treasurer for King County, upon reimbursement to them by Plaintiffs for their expenditures in acquiring said property, the sum to be fixed by the Court and ordered paid out of the money deposited in the registry of the Court; that Plaintiffs be restored to full possession and ownership of said property, free of any right, title or interest of the Defendants, or either of them; that the Plaintiffs' title to said property be quieted as against any claim of the Defendants therein; that Defendants Clarence A. Rees and Evelyn E. Rees, his wife, be required to reimburse Plaintiffs for

Bankrupts' Exhibit No. 1—(Continued)

all loss of rentals during the period Plaintiffs have been kept out of possession of their property, and that Plaintiffs do have judgment therefor.

II. That, as to Plaintiff's Second Cause of Action, that the right, title and interest of Plaintiffs be quieted as against the Defendant, Cora J. Skirving, formerly Cora J. Nessly, and against the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, and each of them, to the North 65 feet of the Southwest Quarter of the Northeast Quarter, lying Southeasterly of the Northern Pacific Railway Right of Way and Westerly of Jenkins Creek, Section 2, Township 21 North, Range 5 East W. M., King County, Washington, said property being the North 65 feet of the property described in Paragraph I of Plaintiffs' Second Cause of Action, together with all improvements thereon.

III. That Plaintiffs be granted such other and further relief as to the Court may seem right and property; and that they be granted their costs and disbursements to be taxed.

/s/ LADY WILLIE FORBUS,
Attorneys for Plaintiffs.

State of Washington,
County of King—ss.

Lady Willie Forbus, being first duly sworn, upon oath deposes and says:

That she is the attorney of record for the Plaintiffs in the above entitled action; that she has read the foregoing complaint, as amended, knows the

Bankrupts' Exhibit No. 1—(Continued)

contents thereof, and believes the same to be true; and that she makes this verification on behalf of the Plaintiffs for the reason that they are absent and are unable to be present to make the same.

/s/ LADY WILLIE FORBUS.

Sworn to and subscribed before me on this September 6th, 1944.

/s/ PATRICIA SADLER,
Notary Public, in and for the State of Washington, residing in Seattle.

[Endorsed]: Filed Sept. 6, 1944.

In the Superior Court of the State of Washington for King County

No. 352943

SOREN N. JENSEN and ANNA JENSEN, husband and wife,

Plaintiffs,

vs.

CLARENCE A. REES and EVELYN E. REES, his wife, and CORA J. NESSLY, now CORA J. SKIRVING,

Defendants.

AMENDED ANSWER OF DEFENDANTS REES

Come now the defendants, Clarence A. Rees and Evelyn E. Rees, his wife, and answering the

Bankrupts' Exhibit No. 1—(Continued)

amended complaint of the plaintiffs, admit, deny and allege as follows:

I.

Answering Paragraph I thereof, defendants admit the same.

II.

Answering Paragraph II and III thereof, defendants having no knowledge or information sufficient to form a belief as to the truth or falsity thereof, therefore deny the same.

III.

Admit and affirmatively allege that the property described in Paragraph IV of said amended complaint was segregated into tax lots 4 and 46 in the year 1928.

IV.

Answering the first paragraph of Paragraph V thereof, defendants having no knowledge or information sufficient to form a belief as to the truth or falsity thereof, therefore deny the same. Deny the second paragraph of said Paragraph V.

V.

Answering Paragraph VI thereof, defendants having no knowledge or information sufficient to form a belief as to the truth or falsity thereof, therefore deny the same.

Bankrupts' Exhibit No. 1—(Continued)

VI.

Answering Paragraph VII thereof, defendants admit that the general taxes on tax lot 4 were unpaid for the years 1924 through 1927, and following, and that the property was foreclosed and a tax deed issued to King County in April of 1932, but deny that plaintiffs had no knowledge of such facts until just prior to the institution of this action.

VII.

Answering Paragraph VIII thereof, defendants den yeach and every allegation made and therein contained and particularly that the plaintiffs had no knowledge of the foreclosure.

VIII.

Deny Paragraph IX thereof.

IX.

Admit Paragraph X thereof.

X.

Admit the first paragraph of Paragraph XI thereof and deny the second paragraph in said Paragraph XI contained.

XI.

Admit the first paragraph of Paragraph XII and deny the second paragraph in said Paragraph XII contained.

Bankrupts' Exhibit No. 1—(Continued)

XII.

Answering Paragraph XIII thereof, admit that they now occupy and have occupied said property since acquiring the property from King County, but deny each and every other allegation in said paragraph contained.

XIII.

Answering Paragraph XIV thereof, admit that plaintiffs have offered to pay into the registry of this court, in the complaint first served herein, the sum of $100, but deny each and every other allegation in said Paragraph XIV contained.

XIV.

Deny Paragraph XV thereof.

Answering further by way of affirmative defense, defendants Rees allege:

I.

That the defendant, Clarence Rees, formerly operated a green house and for some time past has endeavored to find a suitable location for the re-establishment of this business after the war. That in attempting to find a suitable location, he inspected a large area in the vicinity of Lake Meridian and found what he considered a suitable location for his proposed business near Jenkins Creek where it crosses the James B. Kinne road about four miles out of Kent. He inquired in the vicinity

Bankrupts' Exhibit No. 1—(Continued)

concerning the ownership of this property. The property appeared to be a large tract which had been used in times past to pasture cattle. A portion of it had not yet been cleared and the tract was lower than the road bed and was green, either due to springs on the property or to percolating waters; that there was a makeshift house and some sheds on the property.

II.

That the defendant Clarence Rees learned that title to a twenty-two (22) acre portion of the tract was in the name of Cora Skirving and that King County owned a small triangular portion of approximately 1.7 acres and that the portion owned by King County was for sale. That Schedule "A" hereto attached and by this reference made a part hereof is a rough sketch of the two tracts according to the plat in the assessor's office.

III.

That defendant Clarence Rees again viewed the property and as far as he could discern, the sheds and place upon which the people were living were located mostly on the property owned by Mrs. Skirving, with a portion of said structures projecting over onto the tract owned by King County. That thereafter he wrote to Cora Skirving asking if she would sell her property and inquiring as to what terms. He later received an answer stating the terms and a sale was consummated, the property being described by a metes and bounds description and including appurtenances.

Bankrupts' Exhibit No. 1—(Continued)

IV.

That at approximately the same time the sale with Cora Skirving was consummated, a sale was also consummated with King County for the purchase of the triangular tract which has been referred to in plaintiff's amended complaint as tax lot 4.

That upon taking possession of the property, defendants found that the improvements consisted of a four-room house with an annex, sheds and a ship's refrigeration compartment which resembled a box car. That the ship's refrigeration compartment was suitable as a storage room only. That while the house had plumbing facilities, they were not in a usable condition, the pipes being clogged with filth and there was no outlet for waste materials. That the ceiling in the main room of the house had broken loose and was falling in. That the floors were warped from exposure to the elements and a lack of a proper foundation. Likewise, that the walls were out of plumb and were discolored and stained from exposure.

V.

That immediately upon taking possession, defendants Rees spent time and money making the place sanitary and livable. That they sanded the floors, temporarily tacked up the ceiling of the rooms, put a pump into operation and cleaned out the pipes and pumping system.

Bankrupts' Exhibit No. 1—(Continued)

VI.

That Soren Jensen then claimed he was the owner, demanded $1,200 from the defendants and threatened them with extended litigation should the defendants Rees fail to pay his claim.

VII.

That so far as defendants were able to ascertain, Cora Skirving had owned the 22-acre tract since about 1920. That from the time Cora Skirving acquired the property until about 1932, she leased the property to T. C. George, a land owner in that vicinity, for pasturing his cows. That to prevent cattle from wandering onto the public road, a two-wire fence was strung along the right-of-way of the County Road from the junction of the railroad to Jenkins Creek.

VIII.

That in or about the year 1932, Cora Skirving sold the property under a real estate contract to one John Hamilton, also known as "Doc" Hamilton, a negro. That this contract was not recorded. That "Doc" Hamilton used part of the Skirving property to pasture cattle and other neighbors also pastured cattle there during the time "Doc" Hamilton was in possession and thereafter to the present time, using the entire cleared area of the Cora Skirving property and the King County property.

Bankrupts' Exhibit No. 1—(Continued)

That at no time was there a dividing fence of any nature whatsoever between the Cora Skirving property and tax lot 4.

IX.

That "Doc" Hamilton in about the year 1936 or 1937 purchased a ship's refrigeration compartment at a ship's salvage sale in Seattle and had the ship's refrigeration compartment moved onto the Cora Skirving property. That he erected a building for roadhouse purposes on the Cora Skirving property. That thereafter in 1938 he abandoned the place and a foreclosure action was begun for material and labor liens for plumbing fixtures put in said roadhouse. That Cora Skirving was made a party defendant to the foreclosure action and a stipulation was entered into between Cora Skirving and the plaintiffs in the foreclosure action in 1938 that the buildings should be sold as personal property and that there would be no cloud on title or claim against the real property. That Soren Jensen bid the buildings in at the sheriff's sale, following the foreclosure action, in December of 1938.

X.

That thereafter Soren Jensen obtained Cora Skirving's permission to move the buildings off the cement foundation on the Skirving property, but after receiving said permission, he moved the buildings a short distance only and then abandoned the task. That the buildings were abandoned and

Bankrupts' Exhibit No. 1—(Continued)

deserted for a period of time. That cattle were pastured by the neighbors on the Skirving and King County property after said foreclosure sale; that at no time was Soren Jensen in continuous, open, notorious or exclusive possession of any of the Skirving property.

XI

That the plaintiff Soren Jensen knew of the segregation and foreclosure of tax lot 4 by King County as shown by his discussion of tax statements received with T. C. George, a neighbor, in or about 1931; and the discussions of the unpaid taxes on all portions of the property involved in the foreclosure case of the National City Bank of Seattle vs. Washington Irrigation and Land Company (which is also referred to in plaintiffs' complaint), said discussions being with Burton J. Wheelon, attorney for the National City Bank of Seattle in said foreclosure action, in the course of said litigation in attempting to work out a settlement of the action in the year 1932.

Wherefore having fully answered, defendants Rees pray that plaintiffs' amended complaint be dismissed and for their costs and disbursements herein to be taxed against the plaintiffs.

/s/ DAVID J. WILLIAMS and
MARY E. BURRUS
Attorneys for Defendants
Rees.

State of Washington,
County of King—ss.

Clarence A. Rees, being first duly sworn on oath, deposes and says: That he is one of the defendants in the above entitled action; that he makes this verification on behalf of himself and his wife, Evelyn E. Rees, and is authorized so to do; that he has read the foregoing Amended Answer, knows the contents thereof and believes the same to be true.

CLARENCE A. REES.

Subscribed and sworn to before me this 31 day of October, 1944.

/s/ MARRY E. BURRUS,
Notary Public in and for the State of Washington, residing at Seattle.

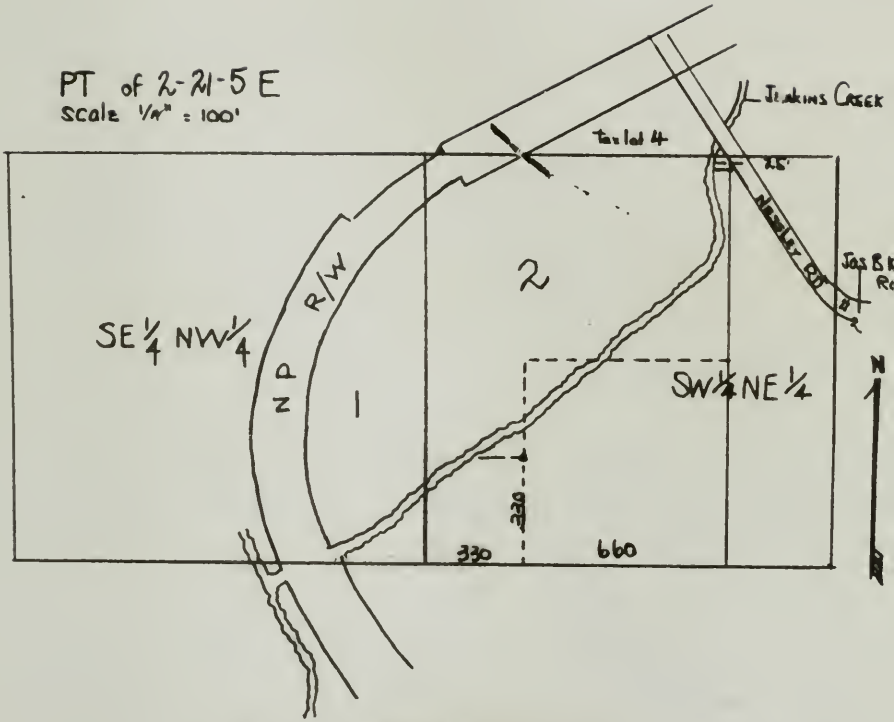
Copy Received: Date, Nov. 3, 1944. Firm, Lady Willie Forbus. By D. B.

SCHEDULE "A"

CORA SKIRVING PROPERTY SOLD TO DEFENDANTS REES

and

TAX LOT "4"



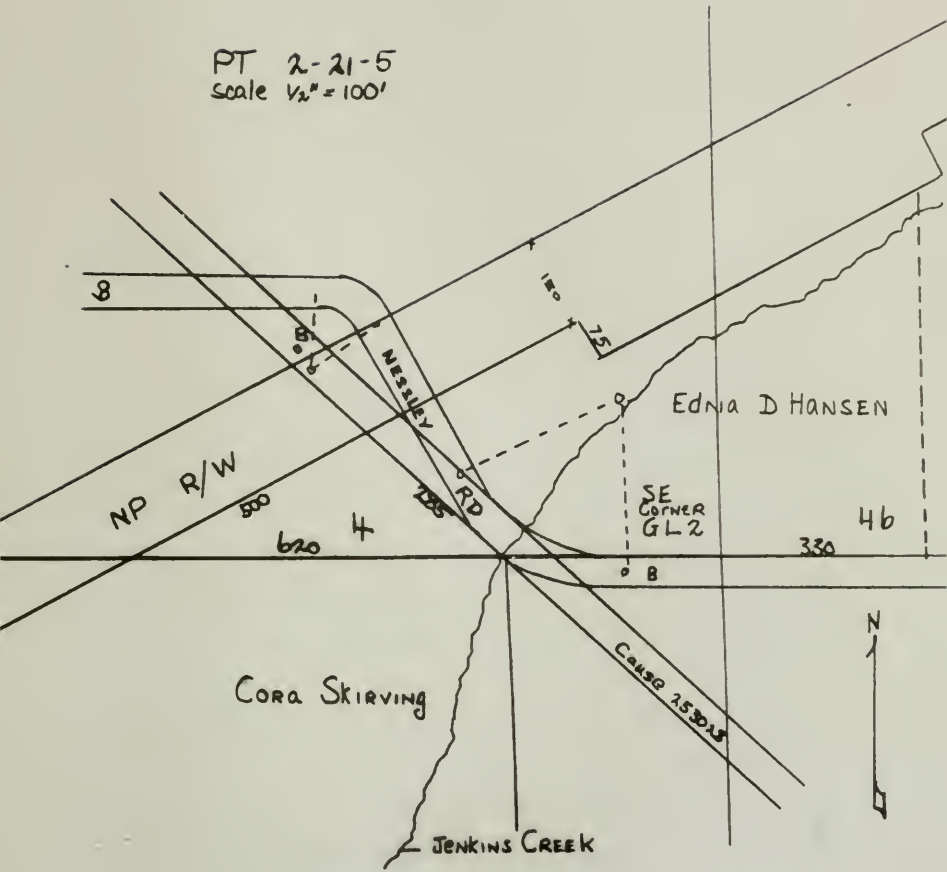
DESCRIPTION OF SKIRVING PROPERTY SOLD

That portion of the Southeast quarter of the Northwest quarter of Section Two (2), Township Twenty-One (21) North, Range 5, E.W.M., lying east of the Northern Pacific Railway right of way, AND the West 990 feet of the southwest quarter of the Northeast quarter of said section, LESS the Northern Pacific Railway right of way; LESS the south 660 feet of the east 660 feet; LESS portion of the north 660 feet lying easterly of Jenkins Creek, AND LESS portion of the South 330 feet of the west 330 feet lying easterly of Jenkins Creek; Together WITH a right of way for road over that portion of the north 25 feet of the southwest quarter of the northeast quarter lying between Jenkins Creek and Soos Creek, Berrydale road, EXCEPT roads; King County, Washington

7/32

SCHEDULE "A"

TAX LOT "4"



All of Government Lot 2 lying Southeast of Railroad and Westerly of Jas. B. Kinne Road (4), Section 2, Township 21 North, Range 5 East, W. M., situated in King County, Washington.

8/32 [Endorsed]: Filed Nov 3 1932.

BANKRUPT'S EXHIBIT No. 2
REAL ESTATE CONTRACT

It Is Hereby Agreed by and between Cora J. Skirving, formerly Cora J. Nessly (a widow), the vendor, and Clarence A. Rees and Evelyn E. Rees, the purchasers, that the said vendor will sell to said purchasers, their heirs or assigns, and that the said purchasers will purchase the following described lot, tract, or parcel of land situated in King County, State of Washington, to-wit:

That portion of the southeast quarter of the northwest quarter of Section Two (2), Township Twenty-one (21) North, Range Five (5), E.W.M., lying east of the Northern Pacific Railway right of way; and the west 990 feet of the southwest quarter of the northeast quarter of said section, less the Northern Pacific Railway right of way; less the south 660 feet of the east 660 feet; less portion of the north 660 feet lying easterly of Jenkins Creek, and less portion of the south 330 feet of the west 330 feet lying easterly of Jenkins Creek together with a right of way for road over that portion of the north 25 feet of the southwest quarter of the northeast quarter lying between Jenkins Creek and Soos Creek Berrydale road; except roads; with the appurtenances thereto belonging, on the following terms:

1. The purchase price of said land is Twenty-one Hundred and No/100 Dollars ($2100.00), of which the sum of Five Hundred and No/100 Dollars ($500.00) has this day been paid, the receipt

whereof is hereby acknowledged by said vendor and the further sum of Sixteen Hundred and No/100 Dollars ($1,600.00) to be paid at address furnished as follows: The sum of $200.00 or more on the seventh day of January, 1945, and the sum of Two Hundred Dollars or more each succeeding January seventh with interest on all deferred payments from date hereof at the rate of five per cent per annum, to be paid annually until the full payment thereof.

2. Said purchasers agree to pay all taxes, assessments and impositions levied or assessed against said property subsequent to the date hereof, at the time the same shall become due and payable; also to keep all buildings thereon insured for a sum equal to the deferred payments above specified, in some insurance company satisfactory to said vendor, with loss, if any, payable to said vendor or her assigns as their interest may appear.

3. It is further agreed that no extension of time of payment or waiver of default in the payment of any instalment of principal or interest due under this contract shall affect the right of said vendor to require prompt payment of any subsequent instalments of principal or interest, or to declare a forfeiture for non-payment thereof.

4. Said purchasers agree to execute, acknowledge and deliver at any time on demand of vendor a mortgage for balance unpaid on this contract, payable in instalments as herein specified, and to assign insurance as security for payment thereof in a sum equal to the face of such mortgage.

5. Said land shall be conveyed by a good and sufficient Title Insurance and deed to said purchasers, when said purchase price shall be fully paid, or upon demand of vendor for a mortgage covering the unpaid portion of purchase price.

6. Time is of the essence of this contract, and in case of failure of the said purchasers to make either of the payments or perform any of the covenants on their part, this contract shall be forfeited and determined at the election of the said vendor; and the said purchasers shall forfeit all payments made by them on this contract and all rights acquired hereunder, and such payments shall be retained by the said vendor as liquidated damages, and she shall have the right to re-enter and take possession of said land and premises and every part thereof.

It is hereby agreed that if full payment is made in one year from this date that ($1900.00) Nineteen Hundred and no/100 Dollars will be accepted as full payment.

Executed in duplicate this 13 day of January, 1944.

[Seal] CORA J. SKIRVING

[Seal] EVELYN E. REES

[Seal] CLARENCE A. REES

[Letterhead of M. L. Longfellow]

February 26, 1944.

Mr. S. N. Jensen, and
Anna Jensen,
425 Harrison Street
Kent, Washington

Mr. Emmett D. Gordon and wife
Renton, Washington

Dear Sirs:

I am writing you on behalf of Clarence A. Rees and wife, concerning Real Estate located in King County, Washington, described as follows, to-wit:

> All of Government Lot 2 Lying Southeast of Railroad and Westerly of Jas. B. Kinne Road (4), Section 2, Township 21 North, Range 5 East, W. M.

This property was acquired by deed by Mr. and Mrs. Rees under date of January 20th, 1944, and they have been entitled to the possession thereof ever since said date.

I understand that Mr. Emmett D. Gordon and wife are now residing on this property, or a part of the same, claiming the right to so occupy the same by authority of Mr. and Mrs. Jensen, but there is no legal basis for said occupancy by any of the parties hereinabove mentioned, and you are hereby notified and required to vacate said property immediately upon receipt of this notice.

There is a dwelling house located in part, possibly, upon this property, but Mr. Rees has purchased other real estate joining this, and consequently is entitled to the dwelling house regardless of whether the same is located upon the real estate hereinabove described, or upon the other tract of real estate which has been purchased by Mr. Rees.

Yours very truly,

Mll:m /s/ M. L. LONGFELLOW.

[Endorsed]: Filed April 20, 1945.

BANKRUPTS' EXHIBIT No. 3

In the Superior Court of the State of Washington for King County

No. 352943

SOREN N. JENSEN and ANNA JENSEN, husband and wife,

Plaintiffs,

vs.

CLARENCE A. REES and EVELYN E. REES, his wife, and CORA J. NESSLY, now CORA J. SKIRVING,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Cause coming on regularly for trial on April 19, 1945, before the above entitled Court, the Honorable J. T. Ronald presiding, upon the

Bankrupts' Exhibit No. 3—(Continued)

Amended Complaint of Plaintiffs, impleading in equity, and the Amended Answer of Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, and the Answer of Cora J. Skirving, another Defendant; whereupon said cause proceeded to trial; and the Court having heard the testimony and evidence of Plaintiffs and their witnesses, Plaintiffs rested; and thereupon the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, introduced testimony and evidence in their behalf and rested; and thereupon the Defendant, Cora J. Skirving gave testimony in her own behalf and rested; and the Court having heard the testimony and evidence, and having heard the arguments of respective counsel, the Plaintiffs appearing by and through their attorney of record, Lady Willie Forbus, and the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, appearing by and through their attorneys of record, David J. Williams and Mary E. Burrus, and the defendant, Cora J. Skirving, appearing per se; and the Court having fully considered the law and the evidence in said cause,

Now, Therefore, the Court Hereby Makes the following

Findings of Fact

I.

That plaintiffs and Defendants are now and during the times herein mentioned have been residents of King County, Washington.

Bankrupts' Exhibit No. 3—(Continued)

II.

That on or about June 4, 1929, Plaintiffs purchased on real estate contract from the Seattle Development Company of Seattle, Washington, the following described property:

> That portion of Government Lot No. 2, Section 2, Township 21 North, Range 5 East W.M., lying Southeasterly of the Northern Pacific Railway Company's right of way, and the West 330 feet of that portion of Government Lot No. 1, of said Section 2, lying southerly of said right of way, all in King County, Washington.

which said contract was recorded June 27, 1929, in Vol. 1435 of Deeds, page 409, under Author's File No. 2545354, records of the office of County Auditor of King County, Washington.

III.

That at the time Plaintiffs purchased the aforesaid property the National City Bank of Seattle, Washington, held a first real estate mortgage upon the same; and that said mortgage was thereafter foreclosed in Cause No. 236197 and a decree of foreclosure was entered therein in the Superior Court of King County, Washington, in due course.

That thereafter on or about December 19, 1931, said property was offered for sale at public auction in satisfaction of the judgment, whereupon Plaintiffs became the best and highest bidder for same,

Bankrupts' Exhibit No. 3—(Continued)

and on January 22, 1932, the Superior Court of King County ordered the sale confirmed, whereupon the Sheriff of King County issued a Sheriff's deed to Plaintiffs covering said property, which deed was recorded on December 20, 1932, in Volume 1518 of Deeds, page 201, records of the King County Auditor, under Auditor's file No. 2744699.

IV.

That in the year 1928 the aforesaid property was segregated by the Assessor's office of King County as follows:

(a) That portion of said Government Lot 2, lying southeasterly of the Northern Pacific Railroad Company right of way and Westerly of the James B. Kinne Road, Section 2, Township 21 North, Range 5 EWM, situated in King County, Washington, being known as Tax Lot 4;

(b) That portion of said Government Lot 2, lying southeasterly of the Northern Pacific Railroad Company right of way and Easterly of the James B. Kinne Road, together with the West 330 feet of Government Lot 1, lying southerly of said railroad right of way, situated in King County, Washington, being known as Tax Lot No. 46.

V.

That both the real estate contract issued in 1929 and the Sheriff's Deed issued in 1932, to Plaintiffs,

Bankrupts' Exhibit No. 3—(Continued)

contained the legal description set out in Paragraph II as one single tract.

That at no time during the times hereinbefore or hereinafter mentioned did the Plaintiffs actually learn of the segregation of their property into Tax lots 4 and 46; nor did they actually learn of said segregation until just prior to the institution of this action, but as a matter of fact the segregation had been made of record by the County Assessor in 1927.

VI.

That during the year 1929, after the Plaintiffs purchased the aforesaid property, Edna D. Hanson purchased the vendor's equity in Subdivision (b) above, or Tax Lot 46, from the Seattle Development Company, subject to Plaintiffs' contract of sale.

VII

That the general taxes on tax lot 46, being subdivision (b) above, were paid December 31, 1929, by said Edna D. Hanson or her agents and thereafter by the Plaintiffs in this action.

That the general taxes on Tax Lot No. 4, being subdivision (a) above, were unpaid for the years 1924 to 1927, inclusive, and on June 25, 1930, King County foreclosed its certificate of delinquency for said general taxes in Cause No. 232197, Superior Court of King County, Washington, which action proceeded to judgment and a tax deed covering

Bankrupts' Exhibit No. 3—(Continued)

Tax Lot 4 was issued to said King County on April 21, 1932, as shown by King County Auditor's File No. 2718790, records of King County.

VIII.

That during the month of March, 1930, as pleaded, but on May 10, Plaintiff's went to the King County Treasurer's Office at the Courthouse in Seattle, Washington, and requested a tax statement of all their general taxes due to date, and offered to pay the same, having cash in his hands so to do. That the plaintiff, Soren N. Jensen, contacted a Deputy on duty behind the counter, who took him into a room and after examining a book informed him that the taxes had been paid on said lot and that there was then nothing due.

That Plaintiffs being ignorant of any segregation and without actual knowledge that taxes then due on tax Lot 4 (Subdivision (a) herein) had not been paid, and relying upon the statements made to him by the Deputy, left the office without paying the same.

That the Plaintiffs continued to pay from year to year the taxes shown upon tax statements issued out of the office of the County Treasurer without further checking or further examining said statements, at all times believing that the property described therein was all of the property of the parties purchased on contract.

Bankrupts' Exhibit No. 3—(Continued)

IX.

That the property consists of vacant, pasture land of approximately 1.5 acres.

X.

That on or about January 20, 1944, King County conveyed to the Defendants Rees and wife herein under Tax Deed from the Treasurer of King County, recorded January 24, 1944, in Volume 2196 of Deeds, page 528, under Auditor's File No. 3361972, records of said County, the property acquired by foreclosure on April 21st, 1932, as follows:

(a) That portion of said Government Lot 2, lying Southeasterly of the Northern Pacific Railroad Right of Way and Westerly of the James B. Kinne Road, Section 2, Township 21 North, Range 5 EWN, situated in King County, Washington, being known as Tax Lot 4, said Defendants being Clarence A. Rees and Evelyn E. Rees, his wife.

That said sale was made without the actual knowledge of Plaintiffs, and that they did not actually learn of any of the transactions connected with the acquisition of said property or its sale to the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, until on or about the 14th day of January, 1944, when the Defendant, Clarence A. Rees, demanded immediate possession of said property from the plaintiffs and their tenants.

Bankrupts' Exhibit No. 3—(Continued)

XI.

That the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, paid King County the sum of Fifty ($50.00) Dollars for said property, together with the costs of sale thereof, amounting to approximately $9.00.

~~That at the time of the purchase of said property~~ the Defendants Rees and wife, knew ~~the~~ value of said property was greatly in excess of the amount paid, and also knew that Plaintiffs were ignorant of the ~~pending~~ proceedings for the sale of said ~~property by the County Treasurer~~.

XII.

That at the time of the issuance of the deed to Defendants, Rees and wife, the Plaintiffs had tenants upon said property, and that Defendants Rees and wife demanded that said tenants immediately leave the premises and deliver up physical possession to them; and that immediately thereafter the Defendants Rees and wife took possession of the premises and have kept same up to the present time, over the objections of Plaintiffs.

XIII.

That Plaintiffs have tendered here into the registry of this Court the sum of One Hundred ($100.00) Dollars, to repay Defendants Rees and wife for all sums expended by them in payment for the land and all other necessary expenses incurred by them in connection therewith, and offer to pay any further sums unforeseen at this time for the purpose of reimbursing Defendants Rees and wife in full for all necessary sums by them paid.

Bankrupts' Exhibit No. 3—(Continued)

XIV.

That at the time Plaintiffs acquired the aforesaid property on June 14, 1929, and later by Sheriff's deed on December 20, 1932, the Defendant, Cora J. Skirving, then Cora J. Nessly, owned the following described land adjoining Plaintiff's above described Tax Lot 4, along the south boundary line thereof, to-wit:

> That portion of the Southeast quarter of the Northwest quarter of Section 2, Township 21, North, Range 5 East WM, lying East of the Northern Pacific Railway Right of Way; and the West 990 feet of the Southwest Quarter of the Northeast Quarter of said Section, less the Northern Pacific Railway Right of Way; and less the South 660 feet of the East 660 feet; less portion of the North 660 feet lying Easterly of Jenkins Creek; and less portion of the South 330 feet of the West 330 feet lying Easterly of Jenkins Creek, together with a right of way for road over that portion of the North 25 feet of the Southwest Quarter of the Northeast Quarter lying between Jenkins Creek and Soos Creek-Berrydale Road; except roads, situated in King County, Washington.

XV.

That on or about January 13, 1944, the Defendant, Cora J. Skirving, formerly Cora J. Nessly, sold the aforesaid property on real estate contract to

Bankrupts' Exhibit No. 3—(Continued)

the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, which said contract was recorded in the office of the County Auditor of King County, Washington, on April 19, 1944, in Volume 2218 of Deeds, at page 397, under Auditor's File No. 3378923, records of said County.

That said Defendant. Cora J. Skirving, formerly Nessly, delivered possession of said property to the Defendants Rees and wife, who immediately thereafter took possession of same and are in possession at the present time: and that since the institution of this action said Defendants have paid the full balance due upon said contract, and have received a warranty deed from Cora J. Skirving covering said property.

XVI.

That in 1932, one Doc Hamilton purchased the aforesaid property on real estate contract, and in 1932 erected a house, sheds, barn and removed a refrigerator car thereon; that thereafter certain labor liens were foreclosed thereon, and Cora J. Skirving was made a party defendant. That subsequently she entered into a stipulation in said action that the buildings be separated from the land and sold as personalty, and the title to her land be free from any cloud thereby.

XVII.

That, in accordance with said stipulation, on or about May 9, 1938, said buildings were offered for sale at public auction by the Sheriff of King County

Bankrupts' Exhibit No. 3—(Continued)

and that Plaintiffs purchased the same. That thereafter Plaintiffs removed all of said buildings from the particular place where they were then standing onto the North 65 feet of the above described property, by mistake and inadvertance and under the mistaken belief that they owned said property as the south portion of Lot 4. That at said time it was the general belief of both Plaintiffs and the Defendant Skirving that the North 65 feet belonged to Tax Lot 4, and said Defendant agreed that said buildings might be permanently located at the place of removal under that belief.

That at no time would the Plaintiffs have continued in possession of or maintained said buildings upon the North 65 feet as aforesaid, and at no time would the Defendant Skirving have agreed that Plaintiffs should remain in possession of said North 65 feet, if they, or either of them, had known where the true boundary line between Tax Lot 4 and the Defendant Skirving's property actually existed.

That the houses, sheds, barns and each structure now upon said North 65 feet have been at all times considered as personalty by the Plaintiffs and the Defendant Skirving; and that at the time of her sale of said property to the Defendants, Clarence A. Rees and wife, said structures were not included in the sale and no consideration was given for them, or either of them. That the Defendants Rees and wife never at any time believed they were purchasing said structures, or either of them, having been advised at the time of their purchase that the buildings were no part of the property purchased.

Bankrupts' Exhibit No. 3—(Continued)

XVIII.

That notwithstanding the facts hereinabove set out, the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, on or about January 20, 1944, took possession of all and every one of the structures hereinabove mentioned, moved into the house and ejected the Plaintiffs' tenants therefrom, and in all respects converted said property to their own uses; and denied the use or possession of same to Plaintiffs and their tenants; and continue to do so up to the present time, although the Plaintiffs collected rent thereon for January and February, 1944, and their tenants remained in possession of said houses during said period.

XIX.

That the fair market value of the house and other structures upon the North 65 feet of the Defendant Skirving's property so converted by the Defendants, Rees and wife, at the time of the conversion or about January 20, 1944, was $1,000.00.

To each and every finding herein the Defendants Clarence A. Rees and Evelyn E. Rees, his wife, except, and their exceptions are hereby allowed.

Done in Open Court this 5th June, 1945.

J. T. RONALD,
Judge.

Bankrupts' Exhibit No. 3—(Continued)

And from the foregoing Findings of Fact, the Court makes the following

Conclusions of Law

I.

That the Plaintiffs have not established their right to have the Tax Deed to Tax Lot 4 set aside nor to have the title to said Tax Lot 4 quieted in them upon the ground of equitable frustration by clear, cogent and convincing evidence, as set out in the first cause of action of their complaint, as amended; and that said first cause of action should be dismissed.

II.

That the evidence does not establish that Plaintiffs have been in open, hostile, notorious and exclusive possession of the North 65 feet of the property of the Defendants, as set out in Plaintiffs' second cause of action; and that Plaintiffs are not entitled to said property upon the ground of acquisition by adverse possession; and that said second cause of action should be dismissed.

III.

That this is an equitable action, and the Court has the right to do equity between the parties, once it has acquired jurisdiction of the parties and the causes of action.

Bankrupts' Exhibit No. 3—(Continued)

IV.

That the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, have converted personal property belonging to the Plaintiffs, consisting of a house, shed, barn and other structures situated on the North 65 feet of the Defendants' property, which property was so located thereon by agreement of the Plaintiffs and Defendant Skirving, and was at all times considered as personal property in which the Defendant Skirving never at any time claimed an interest, and was not sold to the Defendants Rees and no consideration was paid by the Defendants Rees therefor.

That the Defendants Rees and wife have become unjustly and unlawfully enriched by their conversion of Plaintiffs' buildings in the amount of $1,000.00, and Plaintiffs are entitled to judgment therefor.

V.

That the Plaintiffs are entitled to their Costs and disbursements herein expended against the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, and the community composed of them.

VI

That the Defendant, Cora J. Skirving, is entitled to have the above entitled action dismissed as to her; and she is entitled to her costs and disbursements expended in the sum of $5.50 against the Plaintiffs.

Bankrupts' Exhibit No. 3—(Continued)

To each and every conclusion herein the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, except, and their exceptions are hereby allowed.

Done in Open Court this 5th June, 1945.

J. T. RONALD,
Judge.

BANKRUPTS' EXHIBIT No. 4

In the Superior Court of the State of Washington for King County

No. 352943

SOREN N. JENSEN and ANNA JENSEN, husband and wife,

Plaintiffs,

vs.

CLARENCE A. REES and EVELYN E. REES, his wife, and CORA J. NESSLY, now CORA J. SKIRVING,

Defendants.

DECREE

This cause coming on regularly for trial on April 19, 1945, before the above entitled Court, the Honorable J. T. Ronald presiding, upon the Amended Complaint of the Plaintiffs, impleading in equity, and the Amended Answer of the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife; and

the Answer of Cora J. Skirving, another Defendant; the Plaintiffs appearing in person and by and through their attorneys of record, Lady Willie Forbus; and the Defendants Rees and wife appearing by and through their attorneys of record, David J. Williams and Mary E. Burrus; and the Defendant, Cora J. Skirving appearing per se; whereupon said cause proceeded to trial; and the Court having heard the testimony and evidence of Plaintiffs and their witnesses, Plaintiffs rested; and thereupon the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, introduced testimony and evidence in their behalf and rested; and thereupon the Defendant, Cora J. Skirving gave testimony in her own behalf and rested; and the Court having heard the testimony and evidence, and having heard the arguments of respective counsel; and the Court having fully considered the law and the evidence in said cause; and having heretofore made and entered its Findings of Fact and Conclusions of Law in writing and filed the same;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the first cause of action of Plaintiffs' Complaint be and the same hereby is dismissed as to the Defendants, Clarence E. Rees and Evelyn E. Rees, his wife.

It Is Further Ordered, Adjudged and Decreed that the second cause of action of Plaintiffs' Complaint be and the same hereby is dismissed as to the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, and as to the defendant, Cora J. Skirving.

It Is Further Ordered, Adjudged and Decreed that the Plaintiffs do have and recover judgment against the Defendants, and the community composed of Clarence A. Rees and Evelyn E. Rees, his wife, in the sum of One Thousand ($1,000.00) Dollars.

It Is Further Ordered, Adjudged and Decreed that the Plaintiffs do have and recover their costs and disbursements herein to be taxed against the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, and the community composed of them.

It Is Further Ordered, Adjudged and Decreed that the Defendant, Cora J. Skirving, do have and recover her costs and disbursements in the sum of $5.50 against the Plaintiffs.

To all and each and every part of which the Defendants, Clarence A. Rees and Evelyn E. Rees, his wife, except, and their exceptions are hereby allowed.

Done in Open Court this June 5th, 1945.

J. T. RONALD,
Judge.

Presented by:

LADY WILLIE FORBUS,
Attorney for Plaintiffs.

Copy received this May 4, 1945.

COLVIN & WILLIAMS,
Attorneys for Defendants
Rees and Wife.

By JOYCE HOLMGREN,
Attorney Per se.

[Endorsed]: No. 11830. United States Circuit Court of Appeals for the Ninth Circuit. Clarance A. Rees and Evelyn E. Rees, bankrupts, Appellants, vs. Soren N. Jensen and Anna Jensen, Appellees. Transcript of Record upon appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed January 12, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11830

In the Matter of
CLARANCE A. REES and EVELYN E. REES,
a marital community,
Bankrupts, Appellants,

vs.

SOREN N. JENSEN and ANNA JENSEN,
his wife,
Creditors, Respondents.

STATEMENT OF POINTS

The decision of the District Court approving the Referee's decision was founded upon a misconception of the law. While the District Judge indicated that he perceived that the facts showed no more

than a technical conversion, he erred in failing to distinguish between the law here applicable and the law properly applicable only to those conversions arising out of aggravated circumstances. He further erred in believing himself bound to uphold the Referee's decision, when the decision for the reasons which appear below, was not supported by the records in the cause.

1. The decision of the Referee in Baukruptcy showed a complete misunderstanding of the facts in the case and was arbitrary and erroneous in both fact and law.

2. The Referee found facts which the State Superior Court had expressly declined to find and which putative facts were without support in the record.

3. The Referee improperly drew certain inferences from the failure of the Bankrupt, Clarance A. Rees, to testify at the hearing before the Referee.

4. The Referee ignored the record as to the location upon the land of the structures technically converted by the Bankrupts, Rees, thus evidencing a failure to comprehend the issues in the State Court proceeding and the nature of the resultant judgment debt.

5. The Bankrupts in the proceedings before the Referee were not given the benefit of the presumptions existing in their favor upon the issue and were thereby prejudiced.

The prime factor in this appeal is that the record does not show such wilful and malicious injury to the property of another as to exempt the judgment debt of the respondents Jensen from the discharge in bankruptcy, and it was error both in law and in fact to have so excepted such judgment debt.

CALVIN & WILLIAMS,
Attorneys for Bankrupts,
Appellants.

Copy received Jan. 22, 1948.

/s/ LADY WILLIE FORBUS,
Attorney for Creditors,
Jensen et al.

[Endorsed]: Filed Jan. 23, 1948.